



COMMONWEALTH OF MASSACHUSETTS
Board of Registration
of
Hazardous Waste Site Cleanup
Professionals

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PROFESSIONAL CONDUCT COMMITTEE
Minutes of Meeting on December 18, 2008
[Approved on January 21, 2009]

Prepared by: Terry Wood

Meeting Location: JSI Center for Environmental Health Studies, Boston, MA.

1. Call to Order: Janine Commerford called the meeting to order at 12:17 p.m. Also present were Deborah Farnsworth, Kirk Franklin, Jack Guswa, Christophe Henry, Gretchen Latowsky, and Kelley Race. Mr. Luhrs joined the meeting at approximately 1:40 p.m. Committee members absent: Gail Batchelder and Debra Stake. Staff members present were Allan Fierce, Brian Quinlan, Lynn Read, Ron Viola, Terry Wood and Al Wyman. Also present was Wesley Stimpson of the LSP Association.

2. Announcements: Ms. Fierce announced that Paul Mullen has officially resigned from the Board. He stated that a party for Mr. Mullen is planned for after the January Board meeting.

Mr. Fierce also announced that he had the following two items to add to New Business:

- 5. B. Request for Stay re: 00C-04
- 5. C. Press Releases after Final Decisions

3. Previous Minutes: The draft minutes of the meeting held on October 16, 2008 were approved with minor edits. No meeting was held in November 2008.

4. Old Business

A. Status of CRTS

At Ms. Commerford's request, the chair of each CRT reported on progress made since the October meeting.

B. Update re: Web Site Subcommittee

Ms. Commerford stated that the subcommittee has not met.

C. Review of draft policy re: private censures

Ms. Wood stated that at the October meeting, the Committee had asked her to research whether any legal impediments existed if the Committee wanted to change Board policy and allow some documents in future private censure cases to be public after the case was concluded. At this point in time, the entire case file is kept private when a case results in the issuance of a private censure. Ms. Wood stated that she did not believe any legal issues would restrict the Board from changing the current policy. She also stated that she had been asked by the Committee to prepare a document comparing how the Board handles dismissed cases, public censures and private censures in terms of public availability of the case file, what information is available on the Web site and to callers, and whether a press release is issued. A copy of this document was included in the packet for today's meeting.

Ms. Commerford stated that she was concerned that the entire case file is public when a complaint results in dismissal but the entire case file is kept private in the event of a private censure. She stated that she liked the idea that some portion of the case file be public when a private censure is issued. For instance, Mr. Fierce suggested at last month's meeting that all documents in the file that were created prior to the Board's decision to issue a private censure could be made public. Ms. Wood stated that she did not endorse the proposal to make all documents dated prior to the Board's decision to issue a private censure public because this policy would include the CRT report and/or any summary memos created by the CRT that the Board relied on in making its decision to issue a private censure. These documents would include the factual basis for the censure and, therefore, the basis for the censure would not be private.

Mr. Luhrs stated that he recalled that the Committee had discussed private censures in the past and the consensus of the Committee at that time was not to issue private censures very often. Ms. Wood stated that very few people seek access to the documents in closed case files and her concern was that, if current policy were changed to allow more documents in the file to be public, private censures might be issued more frequently despite the fact the Board does not issue press releases about those cases. Her concern is that this kind of change might lead to more disciplinary decisions that result in no public notice.

Mr. Guswa suggested that the Board could just make the original complaint and LSP response public in these cases. Committee members also discussed changing the information available on the Web site regarding private censures. After discussion, the Committee asked Ms. Wood to prepare a document setting out different options for discussion of private censures on the Web site and treatment of the case file for discussion at next month's meeting.

5. New Business

A. Complaint 08C-06

This complaint was filed by MassDEP and alleges, among other things, that the LSP did not identify that an Imminent Hazard condition existed relative to indoor air within a commercial building. After discussion of the complaint and response, a motion was made and seconded to appoint a CRT to investigate the complaint. The motion passed unanimously.

B. Request for Stay re: 00C-04

Mr. Franklin and Mr. Fierce are recused from this case so they left the room. The Board issued a final decision regarding case 00C-04 on December 5, 2008. According to the final decision, the LSP's license will be suspended for six months beginning thirty days after issuance of the final decision. Ms. Read explained that the LSP has filed a motion with the Board requesting that the license suspension be stayed because the LSP intends to appeal the Board's final decision in superior court. Ms. Read stated that Mr. Fierce, the prosecuting attorney in this matter, had filed a response to the LSP's motion. A copy of both the motion and response were presented to the Committee members.

After some discussion, a motion was made and seconded to deny the LSP's motion on the grounds that it was premature because the LSP has not formally filed an appeal with the superior court, and the Committee believed it would be more appropriate if the LSP made a motion to the superior court. The motion passed unanimously.

C. Press Releases after Final Decisions

The Committee decided to table discussion of this topic until next month's meeting.

6. Future Meetings

The Committee is scheduled to meet on January 21, 2009 at MassDEP's Central Regional Office in Worcester.

7. Adjournment: The meeting was adjourned at approximately 2:20 p.m.